



Costs Decision

Site visit made on 18 August 2025

by **R J Redford MTCP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 August 2025.

Costs application in relation to Appeal Ref: APP/F1610/W/25/3360893 Joe Gilder Metal Recycling, Fosseway, Lower Slaughter, Gloucestershire GL54 2EY

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Peter Gilder for a partial award of costs against Cotswold District Council.
 - The appeal was against the refusal of planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant considers the Council have behaved unreasonably by including within its reason for refusal, that the proposed removal of condition would be beyond the remit of a section 73 of the Town and Country Planning Act 1990 (as amended) planning application, and did not give fair weight to the Inspector's decision, reference APP/F1610/W/23/3315125 (hereon known as 3315125). The applicant also considered the Council did not provide reasonable communication of this issue throughout the substantial period it took the Council to issue its decision (July 2023 to November 2024).
4. It is clear from the case law¹ referred to by both parties that the removal of a condition has not been tested to the same extent as the variation or addition of a condition, in relation to section 73 applications, or indeed the associated appeals. As such it would be expected that a decision maker would take the evidence before them to guide their conclusions. The weighting the Council chose to give to the case law available to it and the previous Inspector's decision, when considering whether the proposed removal of condition would sit within the remit of section 73, is therefore in my mind, down to planning judgement. Although it is noted I concluded differently within the Appeal Decision.

¹ Finney v Welsh Ministers [2019] EWCA Civ 1868; Freddie Reid v SSLUHC [2022] EWHC 3116 (Admin); Armstrong v SSLUHC [2023] EWHC 176 (Admin); Atwill v New Forest National Park Authority [2023] EWHC 625 (Admin); and Test Valley BC v Fiske [2024] EWCA Civ 1541 (including reference to Lambeth LBC v SSHCLG [2019] UKSC 33)

5. However, in terms of the case law judgements referred to, all bar the Fiske Court of Appeal judgement, were issued before or in the early stages of the section 73 application being with the Council². If the Council considered this such a critical flaw in the application, it is most certainly unclear why it took some 16 months to issue a refusal notice.
6. Taking into account that on submission of the application the appellant had stated that the development had not started, and the permission was due to expire in December 2023, the application had an element time sensitivity. With no satisfactory reason as to the delay, I find the Council has behaved unreasonably by not issuing its decision in a timely manner and this shows a lack of cooperation with other parties.
7. Nevertheless, although a timely decision would have expedited proceedings, for the reasons stated above I believe the applicant would have still likely submitted an appeal and sought legal advice, and it is understood development was able to start within the required time limit. Therefore, as there is nothing compelling to show what costs this delay in decision making had for the applicant, I can only conclude that although the Council has behaved unreasonably on one count, this did not amount to unnecessary or wasted expense. An award of costs, in this instance, is not therefore warranted.

RJ Redford

INSPECTOR

² Finney, Reid and Armstrong before the application was submitted, Atwill on the 22 March 2023, and Fiske Court of Appeal 10 December 2024.